

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION**

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In re:  
IKO ROOFING SHINGLE PRODUCTS  
LIABILITY LITIGATION

Case No. 09-md-2104  
MDL Docket No. 2104  
ALL CASES

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**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE A BRIEF WITH  
FIVE ADDITIONAL PAGES IN SUPPORT OF THEIR MOTION TO DISMISS**

Defendants, by their attorneys, respectfully request that this Court grant them leave to file a brief with five additional pages (30 pages in total) in support of their motion to dismiss Plaintiffs' Amended Consolidated Class Action Complaint ("Complaint"), due May 3, 2010. Counsel for Plaintiffs are not opposed to the relief requested. In support of their motion, Defendants state:

1. In the Complaint, filed April 19, 2010, each of the nine named Plaintiffs alleges nine separate counts against Defendants: (1) breach of express warranty, (2) breach of implied warranty, (3) breach of contract, (4) unjust enrichment, (5) negligence, (6) strict liability, (7) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, (8) actionable misrepresentation and (9) fraudulent concealment. (*See* Compl., Doc. 38.) Accordingly, the Complaint brings a total of 81 individual claims against Defendants.

2. In *Chang v. Baxter Healthcare Corp.*, No. 09-2280, 2010 U.S. App. LEXIS 6257, (7th Cir. Mar. 26, 2010), the Seventh Circuit confirmed that "when a diversity case is transferred by the multidistrict litigation panel, the law applied is that of the jurisdiction from which the case was transferred," including the transferor court's choice of law rules. *Id.* at \*6. In other words, for purposes of choice of law, the Seventh Circuit treats each individual case within this Multi-District Litigation as if it is a stand-alone diversity case in the district it was originally brought.

*See id.* Plaintiffs from five different states originally brought their claims in transferor district courts in four different states. Consequently, each claim by each Plaintiff must be analyzed under the substantive state law applicable to that claim, as determined by the transferor state's choice of law rules. *See id.*

3. Further, each claim of each Plaintiff must be analyzed under the applicable statute of limitations. Each Plaintiff alleges separately the specific year he or she purchased his or her home with IKO shingles (anywhere between 1994 to 2004) and the specific year he or she discovered the alleged problems with those shingles (anywhere between 2004 to 2009). (*See* Compl ¶¶ 17-25.) Accordingly, each claim brought by each Plaintiff (81 in total) must be analyzed under the applicable statute of limitations, based on the dates provided by that particular Plaintiff. *See Chang*, 2010 U.S. App. LEXIS 6257, at \*6-8 (applying the procedural law, including the borrowing statute for analyzing statutes of limitations, of the transferor state). Moreover, anywhere from two to six express limited warranties could apply to each Plaintiff, depending upon when that Plaintiff alleges he or she bought his or her home with IKO shingles.

4. In its March 5, 2010 Case Management Order, the Court established the length of Defendants' brief in support of their motion to dismiss at 25 pages, and Plaintiffs' response at 25 pages. (*See* Doc. 24, ¶ 22(d).) Despite Defendants' best efforts to address all the pleading and statute of limitations problems with Plaintiffs' 81 claims within 25 pages, Defendants' brief is 30 pages long. By this motion, Defendants request that the court grant them leave to file their brief with five additional pages, and grant Plaintiffs leave to file their opposition brief with five additional pages.

5. On April 30, 2010, counsel for the Plaintiffs informed Defendants' counsel that Plaintiffs have no objection to the relief requested in this motion.

**WHEREFORE**, Defendants respectfully request that the Court grant leave for them to file a brief in support of their motion to dismiss with five additional pages (a total of 30 pages), and grant Plaintiffs leave to file their opposition brief with five additional pages (a total of 30 pages).

Dated: April 30, 2010

Respectfully submitted,

**IKO MANUFACTURING INC.,  
IKO INDUSTRIES INC.,  
IKO INDUSTRIES LTD.,  
IKO PACIFIC INC.,  
IKO MIDWEST INC., and  
IKO PRODUCTION INC.,**

By: /s/ Christopher M. Murphy  
One of Their Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2010, I caused a copy of the foregoing document to be served upon the all counsel of record via ECF Notice of Electronic Filing.

/s/ Christopher M. Murphy